

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Matter of Toll Free
Service Access Codes

CC: Docket No. 95-155

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

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COMMENTS OF THE AMERICAN
CAR RENTAL ASSOCIATION

The American Car Rental Association ("ACRA") submits the following comments in response to the Federal Communications Commission's ("FCC" or "Commission") request for comment on proposals regarding use of toll free numbers. Toll Free Service Access Codes, Notice of Proposed Rulemaking, FCC No. 95-419 (released October 5, 1995).

I. INTRODUCTION

ACRA is a national trade association representing most of the nation's major car rental companies, including Budget Rent A Car Corporation, Dollar Systems, Inc., Avis, Inc., National Car Rental, Inc., Thrifty Rent A Car System, Enterprise Rent A Car, Inc., and Alamo Rent A Car, Inc. ACRA's members also include hundreds of small independent businesses which are franchisees/licensees or independent car rental companies. Inasmuch as ACRA members make extensive use of toll free telephone numbers in conducting business with their customers, ACRA has a strong interest in the outcome of this proceeding.

According to the FCC, this rulemaking is occasioned by the fact that the supply of toll numbers beginning with the "800" prefix will be exhausted shortly. This circumstance occurred almost overnight. While it has previously let the private sector resolve such issues, the FCC has

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decided to step to ensure that there will never again be such a critical shortage of toll free numbers for allocation. ACRA applauds the Commission for making the attempt to guarantee that toll free telephone service is available nationwide on an ubiquitous and cost-effective basis.

Although members of ACRA employ toll free telephone service in a manner that is tailored to their specific businesses, several common features exist. Most members employ an 800 number for their reservation systems that is the customer's primary point of contact. This number may spell out a phrase that is a mnemonic (e.g., "1-800-RENT-CAR") or it may simply contain a pattern of easily remembered numbers (e.g., "1-800-333-1234"). ACRA members also subscribe to additional 800 numbers that serve as rollover numbers when multiple calls are made simultaneously to the primary number. While these numbers may not contain any mnemonic or memorable pattern, they are still important to a car rental company's operations. Those members that provide emergency road service to customers offer such service via an 800 number. Finally, many members retain in reserve a series of 800 numbers that are used periodically to conduct marketing research and handle increases in customer calls during peak travel seasons. Maintenance of these reserved numbers also is important to ACRA members.

The six largest members of ACRA (Alamo, Avis, Budget, Dollar, Enterprise, and National) each receive between 500,000 and 2 million calls per month on their 800 lines from consumers inquiring about rental reservations. These companies advertise between 30 and 60 toll-free numbers nationwide and maintain between 300 and 600 active toll-free lines for their reservation centers alone. The number of lines active at any one time depends on the time of year and the level of anticipated telephone calls.

Accordingly, based on its members' use of thousands of 800 toll free numbers, ACRA has a vital interest in this proceeding.

II. SPECIFIC COMMENTS

In the Notice, the FCC has asked for comment on a variety of issues relating to the fair and efficient use and allocation of toll free numbers. Traditionally, the Commission has allowed industry to decide the optimal way to use and allocate such numbers. However, because the supply of unused 800 numbers is nearly depleted, ACRA agrees that the Commission must intervene.

The imminent introduction of the new 888 service access code has required the Commission to examine in detail the allocations scheme for toll free numbers.^{1/} The FCC has proposed a number of options regarding such allocation, and has raised several issues on which it seeks public comment. ACRA is particularly concerned about the following: (1) the issue of the use and allocation of toll free "vanity numbers"; and (2) steps necessary to be taken to guard against warehousing of numbers.

A. Vanity Numbers

The FCC has defined vanity numbers as "telephone number[s] for which the letter is associated with the number's digits on a telephone handset spell a name or word of value to the number holder." Notice at Paragraph 35. ACRA agrees with the Commission, however, that the definition must be expanded to include any numbers in which the holder has a particular interest, be it economic, commercial or otherwise. Thus, for example, ITT-Sheraton Corporation's toll

^{1/} ACRA recognizes that the 888 code is one of several that will be allocated for toll free service. All of ACRA's comments addressing the 888 code are intended to apply to all future service codes (e.g., 877, 866, etc.) as well.

free reservation number, 1-800-325-3535, would be classified as a vanity number because that company has invested substantial marketing resources in ensuring that the public is aware of the number.

Like ITT-Sheraton, ACRA members have invested a great deal of time and expense in ensuring that their 800 toll free numbers are recognized and remembered by their customers. While some ACRA members choose to use numbers that spell words (such as "1-800-RENT-CAR") for their mnemonic value, others use varying combinations of numbers that they believe are more readily remembered by consumers. In fact, of the members polled, all claim that their particular 800 number is important enough that they treat it as though it were a tangible asset, or a registered trademark. Thus, ACRA concurs with the FCC's determination that, for purposes of this proceeding, all numbers in the holder has an economic or commercial interest should be treated as vanity numbers.

The FCC has proposed a series of options, or in some cases alternatives, for ensuring that there is no dilution in the value of existing 800 vanity numbers when 888 equivalent numbers are allocated. ACRA comments below on these options.

1. Right of First Refusal

ACRA believes that current holders of 800 numbers should be permitted to exercise a right of first refusal, which would enable them to receive a superior right vis-a-vis other interested parties to receive the equivalent numbers bearing the 888 prefix. The grant of such a right is important for at least three reasons. First, as indicated, most ACRA members conduct all of their reservation-based activities under specified 800 numbers. Some have invested heavily in marketing their services under these numbers, and thus have developed a significant reliance

on them. Without any restrictions in allocation, a competitor could obtain the 888 equivalent number (e.g., "1-888-RENT-CAR") and thus trade off the recognition factor generated by the holder the 800 number. This would cause significant economic injury to ACRA members.

Second, there is the danger that an unchecked allocation scheme will engender consumer confusion. Consumers that are unfamiliar with the intricacies of the new toll free number allocation scheme may misdial both 800 and 888 numbers. When informed that they have reached the wrong number, these consumers may become exasperated and choose another toll free number. This could be devastating to the unfortunate companies with corresponding toll free numbers.

Finally, as the FCC recognizes, many toll free numbers receive a high volume of calls. For example, a toll free subscriber with an 888 number that corresponds to any major car rental company reservation number might receive a large quantity of misdialled calls. Unless a credit is obtained, the 888 subscriber will have to pay for those misdialled calls. The processing of these credits, together with the fact that it is not always possible to prove a misdial, will create needless time and expense burdens for both toll free service providers and toll free number subscribers.

None of these scenarios will occur if the holders of the 800 numbers obtain the equivalent 888 number. Thus, ACRA supports the Commission's efforts to avoid these problems by proposing a right of first refusal.

The Commission has also asked for comment as to whether 800 number subscribers should be permitted to exercise the right of first refusal on 888 numbers free of charge, or whether they should be required to pay for the right, either through a one-time fee assessed on the subscriber, or through a competitive bidding process. ACRA strongly disfavors any sort of

competitive bidding process. Such a process would artificially drive up the price of the numbers. Those who "broker" toll free numbers that are known to be of great economic importance to certain companies will no doubt bid up the price of 888 numbers in the hope of extorting a sizable "ransom" from the company that holds the equivalent 800 number.

While competitive bidding is not a feasible option, ACRA understands that some form of payment may be necessary in order to prevent the obstruction of the 888 number allocation process. As discussed, many companies typically subscribe to a block of toll free numbers. Under the Commission's proposed right of first refusal, these companies could reserve every 888 equivalent number for which they hold the corresponding 800 number. Obviously, if too many parties holding 800 numbers reserve 888 numbers, there will not be enough 888 numbers for allocation.

The Plan. To prevent this occurrence, ACRA suggests the following. All entities that presently subscribe to specific 800 numbers would be given a set period of time (perhaps 60 days) to initially claim a right of refusal on the 888 equivalent numbers. The right would be asserted by the entity managing the subscriber's records, or the Responsible Organization ("RespOrg") as designated in the Service Management System database. These numbers would thus be removed from the allocation pool. Unless an exemption (as described below) applied, a fee would be imposed (ACRA suggests \$1,000 per number) on the RespOrg on an annual basis to maintain reservation of these numbers.

Exemptions. Subscribers and their RespOrgs would be relieved of the fee requirements in the following circumstances: (1) the subscriber has placed the 888 equivalent number into immediate use and has maintained such use throughout the course of a year; or (2) the subscriber

has met specified minimum usage requirements (e.g., 50,000 calls per year made in the aggregate on all of that subscriber's toll free numbers) and thus would be exempt from paying the fee on a given number of toll free numbers that it uses or has in reserve. The purpose of the first exemption is to avoid penalizing subscribers who comply with the rules by placing the 888 number in service. The purpose of the second exemption is to protect businesses that are not warehousing numbers, but rather need to maintain a reserve of numbers for legitimate business reasons. Clearly, businesses that receive a high volume of toll-free calls have a justifiable reason for reserving additional toll-free numbers. Under ACRA's recommended threshold, for every 50,000 calls per year a business receives on any of its 800 numbers, that business would be entitled to maintain a specified amount of numbers in reserve. If usage fell below this threshold in any given year, the business would either have to pay a fee to maintain those numbers, or return them to the SMS pool.

In order to make this proposal work, the RespOrg that serves as the subscriber's liaison assume control of the allocation of numbers must pay into an escrow account a fee for each number in reserve status. This would prevent the RespOrgs from claiming to be users of numbers and thus eligible for the exemption described above. ACRA believes that the RespOrg should pay the deposit directly into an escrow account. If the number was used, or the minimum thresholds were met, for the entire year, the deposit could be returned, or could be used to reserve additional toll free numbers. Moreover, ACRA supports the Commission's proposal to earmark all fees and funds for particular uses, such as the administration of the SMS database, or otherwise for operations of the North American Numbering Plan.

2. Use of Numerical Classification Code

As an alternative to the right of first refusal, the Commission has proposed that consumer confusion be eliminated and economic interests be protected by the use of numerical codes. As an example, the FCC has suggested using standard industrial classification codes. These codes would be assigned to a particular industry, and any participant in the industry would be able to prevent a competitor from obtaining the equivalent 888 number.

ACRA does not believe that this approach is a satisfactory alternative. First, there is the inherent difficulty in determining appropriate codes of multi-industry conglomerates. Second, this proposal does not prevent the brokers and privates seeking to warehouse the 888 equivalent numbers on behalf of "clients" in that code.

3. Exhaustion of 800 Vanity Numbers

ACRA members do not support the Commission's proposal to refrain from adopting the right of first refusal and instead require the administrator of the 888 database to refrain from allocating 888 vanity numbers until a substantial percentage of the 888 pool is depleted. This will not work for the following reason. Without requiring the notification procedure outlined above, it will be nearly impossible to predict how many existing 800 number holders claim that their numbers are vanity numbers. It must be recalled that under the proposal, nearly any 800 number could legitimately be claimed to be a vanity number. In other words, the pool of "non-vanity" 888 numbers may be too small from which to achieve any significant allocation.

4. Gateway Approach

ACRA does not support the Commission's proposal to require carriers to provide a transitional gateway intercept during the change to a new toll free code. This message would be

expensive to prepare, and may very well cause additional confusion with consumers who would not be accustomed to hearing it. More importantly, it would do nothing to resolve ACRA's concern about competitors "free riding" on the recognition that established 800 numbers have generated.

5. Partitioning

ACRA has serious reservations about the Commission's proposal to require the partitioning of toll free service between business and personal users. Under this approach, business entities would be entitled to exclusive use of 800 numbers, while personal and paging users would be assigned other toll free codes. While in theory this could work (if there is extensive consumer education as to the difference between the codes), in practice it may be extremely problematic. Those businesses obtaining 800 numbers that were formerly personal 800 numbers will be burdened by calls (and assessed with charges) made by parties unfamiliar with the code transfer. In addition, confusion could result when it is unclear whether a subscriber intends to use the toll free number for business or personal purposes.

B. Warehousing

ACRA members are troubled by the existing practices of some in the toll free number business. Several members have encountered the situation where 800 number "brokers" obtained rights to a 800 number that served as a mnemonic that would be valuable to a specific company, and refused to provide that number unless a substantial fee was paid. That number, as well as possibly hundreds of others, was "warehoused" by the broker.

Although this conduct may not be permitted under current industry guidelines, it appears that the guidelines may not be enough of a deterrent. ACRA believes that the Commission

should step in and declare the warehousing of such numbers by brokers to be an unreasonable practice under Title II of the Communications Act. ACRA supports the FCC's proposal that RespOrgs (on behalf of themselves and their agents) certify that numbers under their domain are either in working or reserved status. ACRA also supports shortening the duration that a number may be maintained in reserved status, and also requests that the FCC take quick remedial action against those found to be warehousing numbers of particular value in the hope of extorting a higher fee.

III. CONCLUSION

The FCC should adopt a right of first refusal, along the lines of the plan described herein, to allow existing 800 numbers to gain superior rights in the 888 (as well as future service code) equivalent numbers. The Commission also should take steps to protect against warehousing of numbers.

Respectfully submitted,



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November 1, 1995